



**Queensland University of Technology**  
Brisbane Australia

This is the author's version of a work that was submitted/accepted for publication in the following source:

Dixon, William M. (2010) The meaning of 'material prejudice'. *The Queensland Lawyer*, 30(3), pp. 100-101.

This file was downloaded from: <http://eprints.qut.edu.au/42418/>

© Copyright 2010 Lawbook Company

**Notice:** *Changes introduced as a result of publishing processes such as copy-editing and formatting may not be reflected in this document. For a definitive version of this work, please refer to the published source:*

## The Meaning of 'Material Prejudice'

As dictated by s 213 of the *Body Corporate and Community Management Act 1997* (Qld), the seller of a proposed lot is required to provide the buyer with a disclosure statement before the contract is entered into. Where the seller subsequently becomes aware that information contained in the disclosure statement was inaccurate when the contract was entered into or the disclosure statement would not be accurate if now given as a disclosure statement, the seller must, within 14 days, give the buyer a further statement rectifying the inaccuracies in the disclosure statement.<sup>1</sup>

Provided the contract has not been settled, where a further statement varies the disclosure statement to such a degree that the buyer would be materially prejudiced if compelled to complete the contract, the buyer may cancel the contract by written notice given to the seller within 14 days, or a longer period as agreed between the parties, after the seller gives the buyer the further statement.<sup>2</sup> The term 'material prejudice' was considered by Wilson J in *Wilson v Mirvac Queensland Pty Ltd*.<sup>3</sup>

### Facts

Mrs Wilson agreed to buy a proposed residential lot in stage 2 of Mirvac's Tennyson Reach development. Included in the disclosure statement provided by Mirvac were details of assets proposed to be acquired by the body corporate including, amongst other assets, the following:

- CCTV, cameras and security monitoring equipment;
- BBQ, outdoor tables and chairs;
- Artworks and loose decorative items within lift foyer and common areas; and
- Six lift curtains.

After stage 1 of the development had been completed, Mirvac provided the buyer with a further statement pursuant to s 214 of the *Body Corporate and Community Management Act 1997* (Qld) explaining how certain inaccuracies in the first statement would be rectified together with a substitute disclosure statement incorporating the changes. While the documentation included some proposed assets of the body corporate there was no reference to the assets listed above.

Within the available 14 day statutory period, Mrs Wilson purported to cancel the contract on the basis that she would be materially prejudiced if compelled to complete. In this regard, Mrs Wilson advised that security was a very important consideration for her husband and herself, given their personal circumstances (Mrs Wilson's husband being a Federal Magistrate who was commonly involved with family law matters), and the proximity of the building to the State Tennis Centre and proposed public parklands. To a lesser extent, Mrs Wilson also considered that the absence of artworks, decorative items and a BBQ and tables and chairs detracted from the amenity of the development. Finally, Mrs Wilson considered that the provision of lift curtains were necessary to prevent damage occurring when items were being moved in or out of the building, and to minimise the expense that would be incurred by the body corporate if that were to occur.

Over two weeks later (and outside the 14 day statutory period available for cancellation purposes), Mirvac's solicitors advised that, by oversight, some of the assets which had already been provided by Mirvac upon completion of stage one had not been listed when the further statement was provided. A further statement was enclosed confirming Mirvac's original undertaking to provide all of the assets listed in the original disclosure statement including the security equipment and other assets listed above.

---

<sup>1</sup> *Body Corporate and Community Management Act 1997* (Qld) s 214(1) and s 214(2).

<sup>2</sup> *Body Corporate and Community Management Act 1997* (Qld) s 214(4).

<sup>3</sup> [2010] QSC 87.

## Decision

Wilson J noted that the test for determining whether a buyer would be materially prejudiced if compelled to complete a contract within the meaning of s 214(4)(b) had not been authoritatively determined previously.<sup>4</sup> Wilson J considered the following matters to be clear:

- (a) The test is objective having regard to the particular buyer's circumstances: would someone in the buyer's circumstances be materially prejudiced?
- (b) Material prejudice must be assessed in light of the buyer's circumstances when the further statement is received or at the very latest 14 days from receipt;
- (c) A causal relationship is needed between the inaccuracy and the prejudice;
- (d) There is a need for proportionality between the inaccuracy and the prejudice; and
- (e) As part of consumer protection legislation, the term should be construed beneficially.<sup>5</sup>

Applying these principles, Wilson J held that Mrs Wilson had validly cancelled the contract on the premise<sup>6</sup> that the body corporate would not have a security system that had been promoted as an integral feature of the development where security was a very important consideration for Mrs Wilson. Wilson J noted that due to the occupation of her husband, Mrs Wilson and her whole family 'might reasonably have a heightened sense of vulnerability to unlawful attack.'<sup>7</sup> This omission was compounded by the omission of the other assets which would have enhanced the amenity of the lot being purchased.

## Comment

The need for care when issuing a further statement under s 214 of the *Body Corporate and Community Management Act 1997* (Qld) is clearly illustrated by the result in this instance. Any error made in a further statement should be immediately rectified by giving a fresh further statement. Failure to rectify within the 14 day statutory period available to the buyer for cancellation purposes may well have dire consequences given the focus on the buyer's particular circumstances when assessing material prejudice.

It is understood that the decision of Wilson J has been taken on appeal. The result of that appeal will be awaited with considerable interest.

Bill Dixon

---

<sup>4</sup> *Wilson v Mirvac Queensland Pty Ltd* [2010] QSC 87, [26].

<sup>5</sup> *Ibid* [32].

<sup>6</sup> Wilson J accepted the submission on behalf of Mrs Wilson that the statutory right of cancellation is dependent on the content of the disclosure statement and the further statement, not on other facts unknown to the buyer, but known to the seller.

<sup>7</sup> *Wilson v Mirvac Queensland Pty Ltd* [2010] QSC 87, [39].